IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

S.B. Criminal Revision Petition No. 617/2006
(Mohan Lal Versus Chauth Mal & Ors.)

S.B. Cr. Appeal No. 262/2006
(Narayanlal & Ors. Versus The State of Rajasthan)

S.B. Cr. Revision Petition No. 505/2006
(Rajendra Kumar Sharma Versus Narayan Lal & Ors.)

Date of Judgment :: 13th May, 2015

PRESENT

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Shyam Bihari Gautam for Mr. Pankaj Gupta, for the petitioner in Cr. Revision Petition No. 617/2006
Mr. Prakash Kaushik, counsel for the respondent No.4 in Cr. Revision Petition No. 617/2006
Mr. Harendra Sinsinwar, counsel for the appellants in Cr. Appeal No. 262/2006
Mr. Pradeep Shrimal, counsel for the petitioners in Cr. Revision Petition No. 505/2006
Dr. R.S. Shekhawat, PP for the State

Since all these revision petitions and appeal relate to one incident and arise out of the cross-case, hence the arguments have been heard together and they are being decided by this common judgment.

Brief facts of the case are that on 11.8.2003, Rajendra Kumar filed an FIR No. 333/2003 at Police Station, Chomu for the offence under Sections 147, 148, 149, 323, 307, 447 IPC. Thereafter the investigation was commenced and after completion of investigation, the police filed the challan in the Court of Magistrate concerned, who committed the case to the Court of Sessions. Thereafter the case was

transferred to the Addl. Sessions Judge (Fast Track), Chomu for trial.

Likewise, Mohan Lal also lodged an FIR No. 334/2003 at Police Station, Chomu with regard to same altercation, which is said to have taken place on 11.8.2003 for the offence under Sections 143, 447, 323, 427, 389 IPC. Thereafter the investigation was commenced. After completion of investigation, the police filed the Final Report in FIR No. 334/2003. Being aggrieved by the filing of Final Report, Mohan Lal submitted the protest petition, whereupon after hearing the arguments, the cognizance was taken against the accused persons for the offence under Section 147, 427, 323, 323/149 IPC.

Thereafter charges were framed against the accused persons, who denied for the same and claimed for trial. After conclusion of trial, the trial court vide judgment dated 18.3.2006 passed in case No. 37/2005 arising out of FIR No. 333/2003 acquitted the accused person Narayan Lal S/o Roodharam for the offence under Section 307 IPC and accused persons Jhootha Ram S/o Roodharam, Murari Lal S/o Narayan, Mohan Lal S/o Narayan, Roodmal S/o Deva Ram, Bajrang Lal S/o Jhootharam for the offence under Section 307/149 IPC, but convicted and sentenced the accused persons as under:-

<u>Accused Narayan, Jhootharam, Murari lal, Mohan Lal,</u>

Roodmal and Bajrang Lal – convicted under Section 147, 148, 323, 447 IPC and sentenced to undergo 3 months' SI with a fine of Rs. 100/-; in default of payment of fine, to further undergo 15 days' SI

Accused Narayan – Convicted for the offence under Section 326 IPC and sentenced to undergo 3 years' SI with a fine of Rs. 1000/-; in default of payment of fine, to further undergo 1 month's SI

Accused Jhootharam, Murari lal, Mohan Lal, Roodmal and Bajrang Lal – convicted for the offence under Section 326/149 IPC and sentenced to undergo 3 years' SI with a fine of Rs. 1000/-; in default of payment of fine, to further undergo 1 months' SI

In the FIR No. 334/2003 lodged by the complainant Mohan Lal, the trial court vide judgment dated 18.3.2006 passed in Sessions Case No. 40/2005, acquitted the accused persons Chauthmal S/o Rambux, Girdhari S/o Rambux, Ramlal S/o Rambux; Babu Lal S/o Chauthmal; Banwari S/o Chauthmal; Bajrang lal S/o Chauthmal for the offence under Sections 147, 427, 323, 323/149 IPC.

Being aggrieved by the aforesaid judgment dated 18.3.2006 passed by the court below, these two revision petitions and one appeal have been filed.

Revision Petition No. 617/2006 has been filed by the complainant Mohan Lal (lodger of FIR No. 334/2003) against the acquittal of accused persons, while Revision Petition No. 505/2006 has been filed by the Rajendra (lodger of FIR No. 333/2003) against

acquittal of accused Narayan Lal from the offence under Section 307 IPC and rest of the accused persons from the offence under Section 307/149 IPC.

S.B. Criminal Appeal No. 262/2002 has been filed by the accused persons Narayan Lal, Jhootharam, Murari Lal, Mohan Lal, Rudmal and Bajrang Lal, against their conviction and sentence as awarded by the trial court vide judgment dated 18.3.2006 passed in Sessions Case No. 37/2005.

Revision Petition No. 617/2006 (Mohan Lal Versus Chauthmal & Ors.

Learned counsel for the petitioner has contended that a perusal of the entire prosecution evidence clearly shows that the prosecution has been able to establish its case beyond all reasonable doubts. He has further contended that the trial court has not properly considered the evidence on record and only on some minor contradictions and omissions, has discarded the testimony of the witnesses and acquitted the accused respondents from the charges levelled against them. In such circumstances, the findings of the learned court below are perverse, illegal, and erroneous, thus, the impugned judgment of acquittal cannot be sustained in the eye of law and deserves to be quashed and set-aside.

On the other hand, learned PP appearing for the State assisted by counsel for the respondents have defended the impugned judgment passed by the courts below and stated the same to be just and

proper.

The Court attention was also drawn on the judgment of Hon'ble Supreme Court rendered in the case of **Umrao Versus State of Haryana & Ors**. Reported in (2006) 10 SCC page 136, in which their Lordships of Supreme court observed in para no. 26 that:

> "it is not well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below.
>
> It may be stated that in appeal against acquittal though powers of the High Court to reassess the evidence and to reach its own conclusions are as extensive as in an appeal against an order of conviction, yet as a rule of prudence, it should always give proper weight and consideration to the views of the trial judge as to the credibility of the witnesses, the presumption of innocence in favour of the accused, right of the accused to the benefit of any doubt and thus, High Court should not ordinarily disturb the order of acquittal. Therefore, this Court does not want to interfere with the impugned judgment and order of acquittal passed by the learned trial court and the appeal filed by the State of Rajasthan is liable to be dismissed."

I have heard learned counsel for the parties

and carefully perused the relevant material on record.

Having gone through the impugned judgment passed by the court below, I find that the learned court below has given cogent reasons for not finding the case of the proseuction proved against the accused respondents.

Looking to the facts and circumstances of the case, it can easily be said that the prosecution has not been able to prove its case beyond all reasonable doubts against the accused respondents for the offence for which they had been charged and the learned trial court was right in acquitting the accused respondents. I have no reason to dissent from the findings of acquittal recorded by the learned court below, as they appear to be reasonable and plausible in the facts and circumstances of the case.

Accordingly, this criminal revision no. 617/2006 filed by the complainant fails and the same deserves stands dismissed accordingly.

Cr. Appeal No. 262/2006 and Cr. Revision No. 505/2006

Learned counsel for the appellants has contended that he is not challenging the conviction part of the judgments of the court below, but he is only requesting to this court that occurrence took place in the year 2003 i.e. 12 years ago from today; the appellants are facing the trial since the last 12 years; when the occurrence took place, the appellants were young and now the appellants are old

aged persons; the appellant Narayan Lal has remained in custody for about 2 months and 2 days; the appellant Bajrang Lal has remained in custody for about 17 days; the appellant Roodmal has remained in custody for about 17 days; the appellant Jhootharam has remained in custody for about 1 month and 4 days; the appellant Mohan Lal has remained in custody for about 26 days; and the appellant Murari Lal has remained in custody for about 17 days days; the appellants are married person and having the children of marriageable age; they are not previously convicted persons; hence either they should be given the benefit of probation under Section 4 of the Probation of Offenders Act or Section 360 CrPC; and if not; then they should be released for the period already undergone by them in confinement, as indicated here-in-above.

Learned PP appearing for the State assisted by counsel for the complainant have contended that they have no objection if the appellants are released for the period already undergone by them in custody, but fine should be imposed upon the accused appellants and that amount of fine should be given to the lodger of the FIR No. 333/2003 (Rajendra).

I have heard learned counsel for the parties and carefully perused the relevant material on record.

Looking to the facts and circumstances of the case and keeping in mind the arguments of learned

counsel for the parties, I do not think it proper to release the accused appellants on probation, but in my view, ends of justice would be met if the sentence awarded to the appellants is reduced to the period already undergone by them in confinement, as indicated here-in-above. Hence both, the criminal appeal as well as the revision petition stand disposed of with the following directions:

i) The Cr. Appeal filed by the appellants is partly allowed;
ii) Their conviction is maintained;
iii) Their sentence is reduced to the period already undergone by them in confinement, as indicated above.
iv) A fine of Rs. 75,000/- is imposed upon the accused appellants, which will be deposited by them with the trial court within a period of 3 months from today. After deposition of the said amount of fine, the same shall be given to Rajendra, lodger of FIR No. 333/2003.
v) If the accused appellants do not deposit the aforesaid amount of fine, with the court below within the stipulated period, as mentioned above, then they will serve the sentence, as awarded by the trial court.
vi) The sentence of the accused appellants was was suspended and they are on bail. Their bail bonds will be cancelled by the trial court only after deposition of the aforesaid amount of fine by the appellants with the trial court within the stipulated

period, as mentioned above.

Impugned judgment stand modified, as indicated hereinabove.

(Mahesh Chandra Sharma), J.

DK

All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal
PA